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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

COENRAETS=10

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name _____

Application Number

10510278

Filed

June 15, 2005

First Named Inventor

Benoit COENRAETS

Art Unit

3634

Examiner

DAVID M. PUROL

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

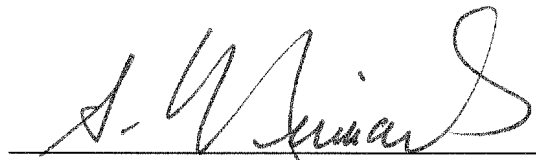
I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 20,520

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____


Signature

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Telephone number

September 24, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐ *Total of ONE forms are submitted.

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REMARKS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Appellant has earlier today filed a Reply to the third Final Rejection mailed March 24, 2009. The main rejection is based on Ruffner in view of Stroup.

Claim 1 recites that when the second door is in the open position and the flexible door is closed, the flexible door is in contact with the wall above the bay to form a seal between the wall and the flexible door, and the flexible door is supported against the bottom edge of the second door. None of the documents, either alone or in combination, disclose or teach that, when the second door (2) is in the open position and the flexible door (1) is in its closed position, a contact and/or seal is formed between the flexible door (1) and the wall (4) above the bay (3), and also the flexible door (1) is supported against the bottom edge (17) of the second door (2) in order to maintain the contact and seal.

Ruffner does not disclose that the flexible door is supported against the bottom edge of the second door in order to maintain the contact and seal between the flexible door and the wall above the bay when the second door is in the open position.

Stroup does not make up for this deficiency. Stroup discloses a single door which has a seal at the bottom edge of the door for closing the door at the bottom of the bay. Further, Stroup discloses a seal on the wall above the bay for sealing the closed door above the bay. But Stroup does not disclose, suggest, or remotely imply that the seal at the bottom edge of the door can be used for supporting a seal at the top of the bay when the door is in the open position.

The arrangement of claim 1 allows the formation of a seal between the flexible door and the top of the bay, which is secured by the bottom edge of the second door. The flexible door is supported by the second door in order to maintain the contact and seal. A tight closing of the bay by the flexible door is thus achieved.

The seal between the flexible door and the top of the bay will be maintained due to the support of the seal by the bottom edge of the second door even if e.g. strong wind makes the flexible door bend inwardly.

Both Ruffner and Stroup disclose a seal at the top of the bay. However there is no teaching at all for securing the seal as is achieved according to Appellant's embodiments as called for in claim 1.

The flexible door in Ruffner consists of a screen for preventing the entrance of insects and foreign materials blowing in the breeze. There is no need for obtaining such a tight closing seal because in case for example of wind acting on the door, it can pass through

the screen of Ruffner. There would be no reason to modify Ruffner to achieve what is claimed, even if there were a teaching to do so, which there is not.

Since Stroup discloses only a single door, there would also be no need for a closing seal at the top of the bay when the door is in the open position.

Consequently, even if it were obvious to combine the references (respectfully not accepted), modifying Ruffner in view of Stroup would not result in the embodiments as claimed. In particular, use of the bottom of the second door as support for sealing the flexible door at the top of the bay has not been disclosed and can not be derived from a combination of the two cited documents.

According to the Examiner, Stroup discloses a door with a rigid bottom edge comprising a guide strip 9 on the wall 1 and a guide strip 20 on bottom edge of the door 19. However, these strips 9 and 20 of Stroup cannot be guide strips because these are not capable of performing the function of guide strips. First in this regard, these strips 9 and 20 do not guide any surface or object in Stroup, and second these strips 9 and 10, made of a resilient material, are not capable of guiding a surface or object.

Two of the main objects explicitly mentioned by Stroup are:

- to provide a door that is easily operated to and from its fully closed position and without substantial frictional engagement with the seals (see Stroup, column 1, lines 16-18);
- to provide a door with clamp means that constitute means for opening the door and the retraction thereof from the jamb seals, thereby positioning the door for free opening movement (see Stroup, column 1, lines 36-39).

Thus from these objects it follows clearly that the seals of Stroup do not and cannot function as guide strips. Stroup clearly does not teach any guiding function which a person of ordinary skill in the art could learn.

Further it is explicitly mentioned that the seals, and thus the portion 9 of the seals, are resilient (see column 2, lines 10-11). To one of ordinary skill in the art, it is clear that a resilient seal is not suitable to perform the function of a guide strip, especially not for guiding a door. This is confirmed by the fact that Stroup avoids any sliding or guiding contact between the door panel and the seals. To this aim, the swinging of the upright track sections 15 on their pivots moves the door toward and from the jamb seals (see column 2, lines 38-40). Further, on the initial opening movement of the door, the lower ends of the track sections 15 are swung rearwardly (see column 2, lines 63-65).

Stroup also explicitly mentions “This initial opening movement of the door also releases the jamb seals so that the door can be easily opened, and without any frictional wear on the seals.” (see column 3, lines 25-28).

Column 3, lines 56-59, of Stroup also mentions that edgewise movement of the door is prevented, thus minimizing wear on the door seals.

From the above, it is absolutely clear that Stroup avoids any moving contact between the door and the seals since these seals are resilient and are not intended to be guiding surfaces and are not capable of functioning as a slide guiding surface.

Thus one of ordinary skill in the art would not incorporate the seals of Stroup into the door of Ruffner for the purpose of slide guiding the flexible door.

Moreover, the synergistic effect of using the bottom edge of the second door for maintaining the contact and the seal between the flexible door and the wall is not present in Ruffner. Indeed, there is a large gap between the bottom edge of the second door, when this door is in the open position, and the flexible door of Ruffner as can be seen in Figure 5 of Ruffner. Thus, contrary to what is indicated in the rejection, the function of supporting the seal of the flexible door is not taught by Ruffner, and Ruffner is not capable of performing this function due to the large gap.

The Examiner has not met his burden.

As regards claim 14, none of the references disclose guide tracks of the first flexible door that constitutes seals between the wall and the second door when the second door is in the closed position. As neither reference shows this feature, there is no way that a combination of these references could meet the claim, even if the combination were obvious.

This double function of the guide tracks is completely new over the prior art and certainly not obvious for one of ordinary skill in the art. The seals of Stroup are absolutely not capable of performing the function of a guide track for the side edges of a flexible door, and the guide tracks of the flexible door of Ruffner cannot be used as seals between the wall and the second door.

Independent claim 15 recites that the bottom edge of the flexible door has an elastic bead extending across its entire width, clamped between the wall and the second door when the flexible door is opened and the second door is closed. None of the applied references discloses a bottom of the first, flexible door such that, when the flexible door is in the open position, constitutes a seal between the wall and the second door in the closed

position. This provides two functions, namely sealing the bottom of the bay when the flexible door is in the closed position and sealing the top of the second door when it is in the closed position. As neither reference discloses such a feature, there is no way that any combination of Ruffner in view of Stroup could meet claim 15 even if the combination were obvious, respectfully not conceded.

Dependent claims 3, 4 and 6-13 set forth additional features in the dependent portions thereof which further define over Ruffner in view of Stroup.

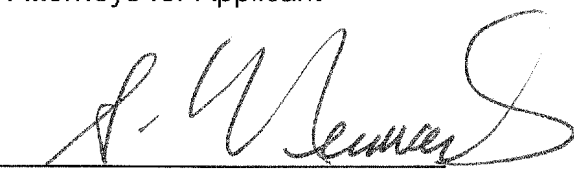
Claims 3, 4 and 6 add the feature that the flexible door (1) has a sealing element (26) for sealing the slit between the bottom edge of the second door and the wall when the second door is open. This feature is not disclosed in any of the cited references, and therefore cannot be achieved by any combination of the two, even if such a combination were obvious. This added feature provides a good seal when the flexible door is closed, and also allows the slit between the bottom edge of the second door and the wall when the second door is open to remain sufficiently large for moving the flexible door up and down without undue friction, which avoid wear when opening and closing quickly.

In claim 11, the flexible door comprises a shutter with side edges that are guided in guide tracks passing through the slit between the wall and the bottom edge of the second door. Thus, the width of the flexible door is and must be smaller than the width of the second door. Such an arrangement presents, for example, the advantage that the guide tracks can be used as sealing elements for the second door when this second door is closed. None of the prior art documents, including Ruffner, teach or suggest that the flexible door can have a smaller width than the second door.

The Examiner has not met his burden and the rejections should be withdrawn.

Respectfully submitted,
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